UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSE DEL-ORDEN, on behalf of himself and all others similarly situated, Plaintiff, -against- EATALY AMERICA, INC.., Defendant.	Case No.: 16-cv-2361:

DEFENDANT EATALY'S COUNTER STATEMENT OF UNCONTESTED MATERIAL FACTS

The defendant, Eataly America, Inc ("Eataly"). through its attorneys, Wilson Elser Moskowitz Edelman & Dicker LLC, hereby responds to the plaintiff's statement of uncontested facts. That statement was submitted by the plaintiff, pursuant to Rule 56.1 in support of the plaintiff's motion for summary judgment: Eataly responds as follows:

1. Undisputed.

2. Disputed. Although a variety of goods may be obtained through Eataly's website (Eataly.com) the website is not a service of the Eataly's restaurants and store locations. Goods that are not available through Eataly's restaurant and store locations may be obtained by use of the website. Likewise, sit down meals and drink service, which is available through Eataly's restaurants, are not available through the website. As such, the website is a separate part of Eataly's business model.

3. Undisputed.

19. Disputed. Here again, the plaintiff has mischaracterized the defendant's supplemental responses. The responses cited by the plaintiff pertain to admissions that Eataly's website was not compliant with WCAG 2.0 standards. From that statement, plaintiff has improperly extrapolated that Eataly has "admitted that the website is not accessible to blind and visually impaired users" (*see,* Plaintiff's Statement of Material Fact, at ¶ 6).

20. Disputed.

The defendant, Eataly hereby proposes the following as uncontested facts

1. Eataly is an Italian marketplace comprising a variety of restaurants, food and beverage counters, bakery, retail items, and a cooking school (*see,* Affidavit of Franco Denari).

2. Eataly.com is a website through which certain goods are sold. Some goods sold via the website are offered at Eataly's physical locations, while other goods offered on the website are not sold through the physical locations (*Id.*).

3. The marketplace/restaurants are operated separately from the website. To access the goods sold through the restaurant it is not necessary to use the website (*Id*).

4. Eataly has never refused to sell products or services to anyone through its website because of that person's race, nationality, religion, gender, sexual identify or disability (*Id*).

5. Eataly's website has a link to email any questions to the company. It also has a link for live chat, and it has a phone number prominently displayed for users to contact live customer service representatives. Eataly's customer representatives are able to assist customers who have difficulty using the web site (*Id*).

6. Eataly is willing to sell the plaintiff any of the good or services available on line or through its physical locations (*Id*).

Dated: White Plains, New York
March 22, 2017

Respectfully submitted,

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